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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 YOLANDA RICO-CHINN,

No. C-05-01975 MMC

12 Plaintiff,

**ORDER DENYING PLAINTIFF'S MOTION
TO REMAND; VACATING HEARING**

13 v.

(Docket No. 9)

14 THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, and DOES 1 through 10,

15 Defendants.
16 _____/

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18 Before the Court is plaintiff Yolanda Rico-Chinn's motion to remand the instant action to
19 state court pursuant to 28 U.S.C. § 1447(c). Defendant The Prudential Insurance Company of
20 America has filed opposition to the motion, to which plaintiff has replied. Having considered
21 the papers filed in support of and in opposition to the motion, the Court deems the matter
22 appropriate for decision without oral argument, see Civil L.R. 7-1(b), and hereby VACATES
23 the hearing scheduled for July 15, 2005. For the reasons set forth below, the Court DENIES
24 the motion.

25 **BACKGROUND**

26 On December 30, 2004, plaintiff filed the instant action in Contra Costa County
27 Superior Court, alleging breach of an insurance contract for disability benefits and breach of
28 the covenant of good faith and fair dealing. In her complaint, plaintiff did not allege any
specific amount in controversy. The complaint was served on defendant on January 11, 2005.

1 (See Notice of Removal ¶ 2, and Ex. A.)

2 On February 18, 2005, defendant filed an answer to the complaint. (See id. ¶ 4.) On
3 March 4, 2005, defendant served interrogatories on plaintiff, asking her to state the amount of
4 damages she was seeking in the action. (See id. ¶ 5, and Ex. B.) On April 21, 2005, plaintiff
5 served her responses to the interrogatories, in which she stated the amount of disability
6 benefits sought, specifically, \$87,671.83. (See id. Ex. C, Responses to Interrogatories Nos.
7 8.1, 8.3, 8.4, 8.7, and 8.8.)

8 On May 13, 2005, defendant filed a notice of removal, alleging jurisdiction on the basis
9 of diversity.

10 Plaintiff now moves to remand the action on the ground defendant did not file its notice
11 of removal within the requisite time period set forth in 28 U.S.C. § 1446(b).

12 LEGAL STANDARD

13 Pursuant to the first paragraph of 28 U.S.C. § 1446(b), a notice of removal “shall be
14 filed within thirty days after the receipt by the defendant, through notice or otherwise, of a copy
15 of the initial pleading setting forth the claim for relief upon which such action or proceeding is
16 based” See 28 U.S.C. § 1446(b). The second paragraph, however, provides that where
17 “the case stated by the initial pleading is not removable, a notice of removal may be filed
18 within thirty days after the receipt by the defendant, through service or otherwise, of a copy of
19 an amended pleading, motion, order or other paper from which it may first be ascertained that
20 the case is one which is or has become removable” See id.

21 DISCUSSION

22 Plaintiff’s complaint prays for damages in the form of “monthly disability benefits due
23 and payable to Plaintiff from December 1, 2003 to the time of trial . . . [and] any further monthly
24 disability benefits due and payable to Plaintiff to the time she attains the age of 65,” along with
25 damages for emotional distress, punitive damages, and attorneys fees and costs. (See
26 Compl. ¶ 31.) Additionally, plaintiff alleges that she is “presently 58 years old.” (See id. ¶ 5.)
27 Nowhere, however, does the complaint specify the amount of damages plaintiff seeks.

28 Plaintiff contends that in order to ascertain whether the amount in controversy

1 exceeded the jurisdictional minimum, defendant merely needed to consult its own records of
2 plaintiff's past disability payments. These records, she claims, would have revealed the
3 amount of benefits plaintiff had been receiving per month, thus allowing defendant to calculate
4 the total amount plaintiff was owed according to her complaint. As a result, plaintiff argues,
5 "the case stated" by her complaint was removable within the meaning of the first paragraph of
6 § 1446(b), and, consequently, the 30-day period for defendant to file its notice of removal
7 commenced on January 11, 2005, the date defendant was served with the complaint.

8 Alternatively, plaintiff argues that even if defendant's receipt of the complaint did not
9 trigger the 30-day period, defendant's records of plaintiff's past disability payments qualify as
10 "other paper" within the meaning of the second paragraph § 1446(b), and, for that reason, the
11 30-day period likewise should be found to have commenced on January 11, 2005.

12 **A. Section 1446(b), First Paragraph**

13 The Ninth Circuit has not decided the issue of whether the jurisdictional facts
14 supporting removal must be apparent from the face of the complaint in order for the 30-day
15 period set forth in the first paragraph of § 1446(b) to commence on the date the complaint is
16 received. In the Ninth Circuit, as well as other circuits where the issue remains undecided,
17 some district courts have held that the 30-day period commences with receipt of the complaint
18 if the defendant knew or should have known the requisite jurisdictional facts, regardless of
19 whether such facts were discernible from the complaint itself. See, e.g., Kaneshiro v. North
20 American Co. for Life & Health Ins., 496 F. Supp. 452, 460 (D. Haw. 1980); Mielke v. Allstate
21 Ins. Co., 472 F. Supp. 851, 855 (E.D. Mich. 1979). In so holding, those courts have frequently
22 expressed the view that defendants have an obligation to investigate any jurisdictional "clue"
23 the complaint may provide. See, e.g., Kaneshiro, 496 F. Supp. at 460; see also Kanter &
24 Eisenberg v. Madison Assoc., 602 F. Supp. 798, 800 (N.D. Ill. 1985).

25 Of the five courts of appeals to have addressed the issue, however, all have held that
26 "the thirty day time period . . . starts to run from defendant's receipt of the initial pleading only
27 when that pleading affirmatively reveals on its face that the plaintiff is seeking damages in
28 excess of the minimum jurisdictional amount of the federal court." See Chapman v.

1 Powermatic, Inc., 969 F.2d 160, 163 (5th Cir. 1992); see also In re Willis, 228 F.3d 896, 897
 2 (8th Cir. 2000); Huffman v. Saul Holdings Ltd., 194 F.3d 1072, 1077 (10th Cir. 1999); Lovern
 3 v. General Motors Corp., 121 F.3d 160, 162 (4th Cir. 1997); Foster v. Mutual Insurance Co.,
 4 986 F.2d 48, 54 (3rd Cir. 1993).

5 This Court finds the “bright line rule” adopted in Chapman persuasive. See Chapman,
 6 969 F.2d at 163. Section 1446(b) states that the alternative 30-day period provided in the
 7 second paragraph commences only “[i]f the case stated by the initial pleading” is not
 8 removable. See 28 U.S.C. § 1446(b) (emphasis added); see also Lovern, 121 F.3d at 162
 9 (holding 30-day period set forth in first paragraph of § 1446(b) commences only where “case
 10 stated by initial pleading” is removable) (emphasis in original). The statute thus permits the
 11 defendant to rely exclusively on the initial pleading for information bearing on removability.
 12 See id. Requiring such unambiguous notice of removability also lessens the likelihood of
 13 “premature” removals, whereby defendants seek to avoid “accidentally waiv[ing] their right to
 14 have the case tried in federal court,” and “promotes certainty and judicial efficiency” by not
 15 requiring courts to ascertain what a defendant knew or should have known at the time it
 16 received the complaint. See Chapman, 969 F.2d at 163; see also Lovern, 121 F.3d at 162
 17 (declining to require “mini-trial regarding who knew what and when”).

18 To the extent plaintiffs seek to avoid delayed removals, they may, where not prohibited
 19 by state court pleading rules, set forth the amount in controversy in the complaint. Additionally,
 20 Congress has addressed this concern to some extent in diversity cases by requiring that a
 21 notice of removal on grounds of diversity be filed not more than one year after
 22 “commencement of the action” in state court. See 28 U.S.C. § 1446(b).

23 Accordingly, because plaintiff’s complaint did not reveal on its face the removability of
 24 the instant action, the 30-day period did not commence by virtue of plaintiff’s service of the
 25 complaint on defendant.

26 **B. Section 1446(b), Second Paragraph**

27 Plaintiff argues, in the alternative, that defendant’s own records of plaintiff’s past
 28 disability benefits constitute “other paper” within the meaning of the second paragraph of

1 § 1446(b), and because defendant was in possession of those records on the date it was
2 served with the complaint, the 30-day removal period commenced no later than the date of
3 service of the complaint. The Ninth Circuit has not ruled on the definition of “other paper”
4 within the meaning of § 1446(b), nor on when the “other paper” must be received by the
5 defendant.

6 In Chapman, the Fifth Circuit held that the “plain language” of § 1446(b) dictates that an
7 “other paper . . . be received by a defendant only after the defendant has received the initial
8 pleading.” See Chapman, 969 F.2d at 164 (emphasis added). In that regard, the Court of
9 Appeals noted the second paragraph of § 1446(b) applies by its terms only “if the case stated
10 by the initial pleading is not removable,” and, accordingly, that a defendant cannot rely on an
11 “other paper” for purposes of removal until it has received both the initial pleading and that
12 “other paper.” See id. (quoting § 1446(b)). The Court further noted that the statute groups
13 “other paper” with “amended pleading, motion, order,” all of which “clearly refer to actions
14 normally and logically occurring after the filing of an initial pleading.” See id. This Court finds
15 Chapman’s reading of the statute persuasive.

16 Plaintiff’s argument fails for another reason as well. As noted, the 30-day period for
17 removal set forth in the second paragraph of § 1446(b) commences only with the defendant’s
18 “receipt” of an “other paper.” See 28 U.S.C. § 1446(b). Plaintiff’s theory that defendant
19 “received” its own records, i.e., documents created and maintained by defendant, appears
20 inconsistent with the plain language of the statute. Moreover, it would appear contrary to the
21 purpose of § 1446(b) to require courts to conduct “mini-trials,” see Lovern, 121 F.3d at 162,
22 on the extent and significance of the defendant’s own records. See Foster, 986 F.2d at 53
23 (citing with approval district court opinion limiting “other paper” to “court-related documents”
24 and excluding correspondence). Accordingly, the Court finds defendant was not in “receipt” of
25 an “other paper” by reason of its possession of its own records.

26 The Court next turns to other documents. Defendant states that the first document to
27 set forth the amount in controversy was a response to interrogatories received by defendant
28 on April 21, 2005. (See Notice of Removal ¶ 7.) It is well-established that discovery

1 responses qualify as "other paper" within the meaning of § 1446(b). See e.g. Chapman, 969
2 F.2d at 164 (holding response to interrogatory constitutes "other paper"). Accordingly, the 30-
3 day period for removal commenced on April 21, 2005. As a result, defendant's filing of its
4 notice of removal on May 13, 2005, fewer than 30 days thereafter, was timely.

5 **CONCLUSION**

6 For the foregoing reasons, plaintiff's motion to remand is hereby DENIED.

7 This order terminates Docket No. 9.

8 **IT IS SO ORDERED.**

9 Dated: July 12, 2005

10 /s/ Maxine M. Chesney
11 MAXINE M. CHESNEY
12 United States District Judge
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